



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. BILL
ATTORNEY GENERAL

June 30, 1975

The Honorable N. Alex Bickley
City Attorney
City Hall
Dallas, Texas 75201

Open Records Decision No. 99

Re: Confidentiality of financial
statement of municipally-owned
radio station.

Dear Mr. Bickley:

You have requested our opinion regarding the confidentiality, under the Open Records Act, article 6252-17a, V. T. C. S., of the financial statement of a radio station owned and operated by the City of Dallas. You contend that this information is excepted from disclosure because its release would give advantage to competitors and because regulations of the Federal Communications Commission have preempted state law in this area.

Section 6(a)(3) of the Open Records Act specifically declares to be public "information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies. . . ." Section 3(a)(4) excepts from disclosure "information which, if released, would give advantage to competitors. . . ." You assert that radio broadcasting is a highly competitive business, and that the compelled disclosure of detailed financial information would place the city-owned station at a great disadvantage vis-a-vis the thirty-one privately owned stations in the Dallas area, none of which are required to disclose this information.

Authority for the operation of a municipally-owned radio station is derived from Chapter 24, section 10 of the Charter of the City of Dallas, which states further:

The exercise of the power to operate the same
[radio and television broadcasting station] shall
be deemed governmental in character and for
municipal purposes.

In our opinion, since the City has by its own act deemed the operation of its radio station to constitute a governmental function, we believe in this type situation it is precluded from now asserting the proprietary character of that operation.

A city acts in its governmental capacity as an agent of the state, and in such a role, we do not believe that it may properly be deemed to compete with private enterprise. Thus, it is our opinion that the exception of section 3(a)(4) has no application to the release of financial data by a municipally-owned radio station which the city operates in its governmental capacity.

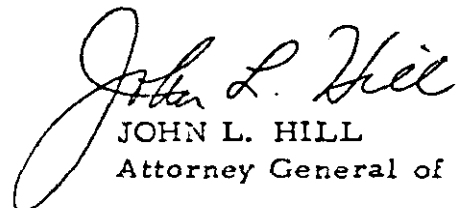
You also contend that this information is not subject to compelled disclosure because of the preemptive nature of federal law. Section 0.457d (1) of the regulations of the Federal Communications Commission states that:

Materials submitted to the Commission which contain trade secrets, or which contain commercial, financial or technical data which would customarily be guarded from competitors by the person submitting it, will not ordinarily be made available for inspection.


Neither this regulation nor the federal Freedom of Information Act under authority of which it was promulgated, 5 U.S.C. § 552, contemplates any absolute prohibition on the disclosure of a broadcaster's financial statement. The Freedom of Information Act does not guarantee the confidentiality of the information, but merely restricts its disclosure by the Commission and other federal agencies. We have discovered no federal law or regulation which would preclude a state from requiring the disclosure of this kind of financial data.

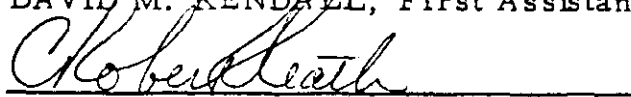
Accordingly, it is our opinion that the complete financial statement of a municipally-owned radio station is public information and should be disclosed.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

jwb